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IN THE

Supreme Court of the United States

October Term, 1963

No. 514

THE MOST WORSHIPFUL UNIVERSAL GRAND LODGE, A.F. & A.M., of Washington; LONNIE C. LARK, its Grand Master; ELIJAH JOHNSON, claiming to be its Deputy Grand Master; FRANKLIN D. DAVIS, claiming to be its Grand Secretary; CLEVELAND MEDKIFF, claiming to be Master of one of its subordinate Lodges and affiliated lodges and groups and all other persons representing themselves to be Officers and Members of said bodies or associations; and MATTIE MITCHELL, Grand Matron of the petitioner's Eastern Star Chapters,

Petitioners,

vs.

MOST WORSHIPFUL PRINCE HALL GRAND LODGE OF WASHINGTON AND ITS JURISDICTION, F. & A. M.: and JOHNNIE ALLEN, its Grand Master; LOUIS SOLOMON, its Secretary; and GEORGE JORDEN, its Grand Treasurer; on behalf of themselves and all other Officers and Members of the Most Worshipful Prince Hall Grand Lodge of Washington and Its Jurisdiction, F. & A.M.; and its subordinate lodges and affiliated bodies.

Respondents.

PETITION FOR WRIT CERTIORARI TO THE WASHINGTON STATE SUPREME COURT

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Respondents.

PETITION FOR WRIT CERTIORARI TO THE WASHINGTON STATE SUPREME COURT

Petitioners herein respectfully ask for review, through Certiorari, of that Judgment of the Supreme

Court of the State of Washington, wherein Petitioners' appeal from a trial court's decision permanently enjoining and restraining the petitioners, above-named, all person claiming to represent said petitioners, including Scottish Rite Consistories and Shrine groups, from establishing or conducting lodges of Masons or auxiliaries thereof within the State of Washington, and from using the words "Ancient Free and Accepted Masons," "Free and Accepted Masons," "Masonic Lodge," "Masons," "Freemasons," "Scottish Rite Masons," "Masonic Lodge," or the initials "A.F. & A.M.," or "F. & A.M.," or any colorable imitations thereof in any manner whatsoever, show the Court as follows:

OPINIONS BELOW

An oral opinion was given by the trial court, that is, the Superior Court of the State of Washington. However, the trial court did sign formal judgment and decree to the effect: That petitioners are permanently enjoined from holding forth or stating that the defendants' Most Worshipful Grand Lodge, A.F. & A.M. of Washington, is a Grand Lodge of Ancient, Free and Accepted Masons, or free and Accepted Masons, or a grand lodge of Masons, or that the Subordinate Lodges of said defendants, petitioners herein, are Masonic Lodges, and from using or employing rituals, ceremonies, names, insignia, emblems, badges, symbols, signs, paraphernalia or designations or an organization of Masons; and from using or attempting to use any of the

secret work or formulas of the plaintiff, Most Worshipful Prince Hall Grand Lodge of Washington and its Jurisdiction, F. & A.M., or the Subordinate Lodges established and chartered by it, or its Eastern Star Chapters or its other associated groups, and or from establishing or conducting lodges of Masons or auxiliaries thereof within the State of Washington and from using the words "Ancient Free and Accepted Masons," "Free and Accepted Masons," "Masonic Lodge," "Masons," "Freemasons," "Scottish Rite Masons," or the initials "A.F. & A.M.," or "F. & A.M.," or any colorable imitations thereof in any manner whatsoever. The Supreme Court of the State of Washington, on appeal, rendered a decision which has not yet been officially reported in a bound volume of the State Reports; it may however, be found in the Washington Decision, Official Advance Sheet, of the State of Washington Report, Volume 162 Washington Decision No. 2, dated May 17, 1963, page 27. This opinion appears in full in the appendix hereto.

JUISDICTION

(a) GROUNDS: The jurisdiction of the United States Supreme Court is invoked on Federal Constitutional Grounds, namely: Failure of the Washington Supreme Court to uphold the provisions of Amendment 14, Section 1, as the same relates to procedural and substantive due process and equal protection of the

law. This precise issue was properly preserved and present to the Washington Court.

(b) DATE OF JUDGMENT: The date of entry of the judgment sought to be reviewed is June 13, 1963.

(c) STATUTORY PROVISIONS: Title 28, Section 1257, entitled State's Court Appeals, Certiorari confers jurisdiction to review this matter by writ of certiorari.

FEDERAL QUESTIONS

Whether petitioners' constitutional rights were violated as declared by the 14th Amendment, Section 1, equal protection of the law, where the Supreme Court of the State rules that exclusive territorial jurisdiction as related to Masonic Grand Lodge was not violated by permitting one Grand Lodge of White Masons and another Grand Lodge of Negro Masons to stand and struck down a third Grand Lodge, petitioners herein; or whether the theory of exclusive Territorial Masonic jurisdiction as it relates to two races of white-colored but not as it relates to colored-colored, violates the constitutional provision, Amendment 14, Section 1:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall

any state deprive any person of life, liberty or property, without due process of law; and, *nor deny any person within its jurisdiction the equal protection of the laws.*"

STATEMENT OF CASE

In 1947 a number of Seattle Negroes, all of whom had become members of four letter lodges in other states before locating in this state, ascertained that there was no grand lodge in this state of the affiliation of Ancient Free and Accepted Masons. (Exhibit 47). Desiring to form a four letter lodge in Seattle, they secured from Hiram of Tyre of California Warrants for the organization of three lodges in this state. (Exhibit 47). All of the charter members of these lodges were already Masons, and after the organization of the three lodges they proceeded to organize a grand lodge in August, 1947.

Following the organization of lodges in Seattle, and in the same year, J. T. Washington, the first Grand Master of Universal, petitioners herein, wrote to the Secretary of State at Olympia, Washington, to ascertain if there was any Negro Masonic Grand Lodge incorporated in this state. The inquiry was apparently forwarded to the Reporter of the Supreme Court, who advised that he knew of no such lodge. (Ehibit 49). Thereupon, petitioner, Universal Grand Lodge, proceeded to incorporate. (Exhibit 48).

The Order of the Eastern Star was organized in the following manner: on February 14, 1949, Star of Hope, Grand Chapter of Louisiana, issued four charters for the organization of chapters in this state. Thereafter, a grand chapter was organized and was commenced in April, 1949, issuing charters to local chapters. In the year of 1958, the Worshipful Grand Lodge, F. & A.M. of Oregon organized a number of Subordinate Lodges in the State of Washington, and these lodges organized the Most Worshipful Grand Lodge, A.F. & A.M. of Washington. (Exhibit 3, page 7). That said Grand Lodge has been continuously in existence in the State of Washington since its organization and has organized many Subordinate Lodges.

Respondent was first incorporated in the State of Washington by Articles of Incorporation entered on the 17th day of July, 1906. It further appears that, in July, 1907, the name of the respondent corporation was changed from Grand Lodge of Free and Accepted Masons, Africani, of Washington, to Most Worshipful United Grand Lodge of Washington, and its jurisdiction, by amended to the Articles of Incorporation, and finally, on September 6, 1944, the name of the respondent corporation was changed to Most Worshipful Prince Hall Grand Lodge of Washington, and its jurisdiction, F. & A.M.

Respondent lodge existed as an unincorporated asso-

ciation in this state or existed in this state in one form or another since the year of 1889 at Roslyn, Washington.

On February 18, 1959, respondent caused to be filed and served upon petitioners Summons and Complaint praying the Court for a permanent injunction enjoining and restraining petitioners from using or displaying, any insignia, names, badges, emblems, symbols, signs, and paraphernalia of the respondent Grand Lodge or the Subordinate Lodges established by the lodge charter, or from any way operating in the State of Washington. After the issues were joined a trial was had before the Court, and a judgment and decree were issued against the petitioners. That in May, 1961, petitioners gave notice of appeal to the Supreme Court of the State of Washington, and proceeded to effect said appeal. That on May 17, 1963, the State Supreme Court passed its decision, affirming the judgment and decree of the Superior Court. That petititoners petitioned the aforesaid court for a review of the decision of the Court, and in June 13, 1963, said petition was denied and the judgment of the Supreme Court became final on June 13 1963. Petitioners in its appeal from the Superior Court to the State Supreme Court of Washington presented several questions among which was the questioned presented in this petition.

FEDERAL QUESTIONS

The Federal Question involved in this petition was presented to the trial court by way of argument prior to the entry of its judgment permanently enjoining petitioners from further operation in any manner in the State of Washington. This question was amplified and specifically signed as error on appeal. The Federal Question herein presented, was properly and timely raised, and presented to the Washington State Supreme Court by assignment of error, and specific oral argument and specific written argument in petitioner's appellant brief. Further, the Washington court passed on same. The question raised and now presented concerning due Process and Equal Protection of the law was answered by the State Supreme Court as follows:

> "Appellant also asserts as a defense that relief should be denied respondents because they do not come into Court with clean hands. The basis for this contention is that because of Masonic doctrine of exclusive territorial jurisdiction, respondents themselves have violated Masonic law because: The White Grand Lodge in the State of Washington, which was organized and existing in this state for many years prior to the respondents establishing their Grand Lodge. It is obvious that the Courts are not bound by Masonic law, nor does it appear that the doctrine the appellant advocates has prevented the operation of both Negro and White Grand Lodges within the State of Washington."

(Most Worshipful Prince Hall Grand Lodge of Washington and its jurisdiction, F. & A.M., v. The

Most Worshipful Universal Grand Lodge, A.F. & A.M., of Washington, volume 162, Wn. d 27, set out in appendix)

ARGUMENT

The general opinion of White Masonic jurist and historians as distinguished from respondents Negro members, who fancy themselves as historians state: that the founding of Prince Hall Grand Lodge, respondents herein, of Massachusetts, known as African Lodge No. 459, was illegal and thus rendered all the lodges which emanated from it, including respondent's lodges, clandestine. In the Encyclopedia of Freemasonry by Albert G. Mackey, revised and enlarged by Robert I. Clegg in 1946, page 702 is stated, inter alia that the subject of Negro lodges has long been a source of contention in the United States, not on account of their color, but because of the supposed illegality of their origin and operation. Further, inter alia, that:

> "An apparently insurmountable barrier to recognition is the doctrine of exclusive territorial jurisdiction only one Grand Lodge in any one state or territory. This rule is confined to the United States and Canada, but is strictly observed and enforced. It prohibits invasion of occupied territory by any other Grand Lodge, not alone those of Negro origin and membership."

Thus, both petitioners and respondents violate the Masonic Law of Exclusive Territorial Jurisdiction herein. In the year of 1897 respondents attempted to

surmount the bar to their existence of this doctrine of Exclusive Territorial Jurisdiction by means of a petition directed to the White Grand Lodge. This ended in failure, (Exhibit 3, pages 65-69). No like petition has ever since been attempted. The position of the White Washington Grand Lodge has never altered. (Exhibit 3, page 69). In 1903 five years after the action above referred to, respondents organized a grand lodge and in 1906 they incorporated. (Exhibits 11 and 12). Knowing they were invading the premises of the White Grand Lodge. The Court in this case permitted and allowed them to continue to violate said premises, but struck down petitioners for its violation of the same premises of respondent's lodge. 162 Wn. D. page 27, dated May 17, 1963, (appendix).

EXCLUSIVE TERRITORIAL

The invasion of Jurisdiction is expressed by the existence of both respondents and petitioners, both being Negro lodges in the State of Washington, and is in contravention of the American doctrine of Exclusive Grand Lodge Jurisdiction. The Grand Lodges of Washington has repeatedly expressed its adherence to that doctrine and in most instances in very strong terms.

It is evident from the present social trend that any doctrine whatsoever that is based upon or permitted to exist because of race, or social tradition, cannot long endure, but must be struck down. The theory expressed

in *Ancient Egyptian Arabic Order of Nobles of Mystic Shrines v. Misbaux*, 279 U. S. 737, 738, 73 AL Ed. 931, 49 Supreme Court Decision. St. 485, 1929, to the effect is no longer pertinent:

> "From early times there has been two distinct Masonic fraternities in the United States, one confined to White men and the other to Negroes."

see appendix 162 Wn. D. page 27, dated May 17, 1963.

The Supreme Court of the State of Washington attempted to justify its action relative to the Exclusive Territorial theory on the basis that the White Grand Lodge was not a party to the particular action brought by the respondents in this case: By their act and conduct they lend substance and further meaning to the violation of petitioner's rights of equal protection of the law as evidenced by Amendment XIV, Section 1, supra.

Petitioners submit that the Federal question here presented was properly before the Washington Supreme Court; also directly ruled upon by that Court and the ruling thereof, conflicted with the constitutional provisions herein alluded to, as well as the decisions of the United States as expressed in *Duncans v. State of Missouri*, 152 S. W. Reports 357:

> "Due Process of Law and Equal Protection is secured if the law operates on all alike and do not

subject the individual to an arbitrary exercise of powers of government."

Further, that it would be reasonable for this court to exercise this discretion in granting this petition.

Respectfully submitted:

LARY REGAL,
WILLIAM F. LOCKETT,
Attorneys for Petitioners.

APPENDIX

WASHINGTON DECISIONS

CONTAINING THE DECISIONS OF THE
SUPREME COURT OF THE STATE OF WASHINGTON

PUBLISHED WEEKLY BY
BANCROFT-WHITNEY COMPANY

OLYMPIA, WASHINGTON. MAY 17, 1963

[No. 36081. Department Two. April 25, 1963.]

MOST WORSHIPFUL PRINCE HALL GRAND LODGE OF WASHINGTON AND ITS JURISDICTION, F. & A. M. *et al.*, *Respondents*, *v.* THE MOST WORSHIPFUL UNIVERSAL GRAND LODGE, A. F. & A. M. OF WASHINGTON *et al.*, *Appellants.*

MOST WORSHIPFUL PRINCE HALL GRAND LODGE OF WASHINGTON AND ITS JURISDICTION, F. & A. M. *et al.*, *Respondents*, v. MOST WORSHIPFUL JOHN A. BELL GRAND LODGE OF WASHINGTON, A. F. & A. M. *et al.*, *Appellants.**

[1] **Fraternal Organizations—Right to Use Name.** In an action by a Masonic lodge to enjoin certain other lodges from holding themselves out to the public as legitimate and officially sanctioned Masonic lodges, it was not error for the trial court to consider, in deciding whether the defendant lodges were entitled to operate as Masonic organizations, the origin and ancestry of the lodges involved.

[2] **Appeal and Error—Review—Findings.** The Supreme Court will not retry issues of fact where there is substantial evidence to support the trial court's findings.

[3] **Fraternal Organizations—Unfair Competition—Similar Names.** An established fraternal organization is entitled to relief under the common law of unfair competition when its name or one so

similar as to be deceiving is adopted by another organization and used in a manner which is confusing and deceiving to the public and is detrimental to the organization already using the name.

[4] **Same—Protection of Name.** The grand lodge of a fraternal organization which was organized in this state for the 5-year period preceding the enactment of RCW 9.37.050, which relates to the fraudulent use of the name of a secret fraternal society which has had a grand lodge in this state for 5 years, was held to be one of the organizations designed to be proected by the statute.

[5] **Equity—Laches.** The doctrine of laches is based upon the principles of equitable estoppel; and to constitutes laches there must not only be a delay in asserting a claim, but also some change in conditions which would make it inequitable to enforce the claim.

[6] **Same—Laches.** Starting a lawsuit is not the only way of manifesting dissent or opposition to claimed unfair competition; and laches is not established simply because an organization attempted to eliminate unfair competition by nonlegal means prior to resorting to legal proceedings.

[7] **Limitation of Actions—Unfair Competition.** RCW 4.16.080(4), a 3-year statute of limitations, does not apply to claims of unfair competition.

[8] **Equity—Laches—Unclean Hands.** A Negro Masonic lodge which sought equitable relief from unfair competition by other Negro lodges purporting to be Masonic grand lodges, was not in court with "unclean hands" simply because a Masonic grand lodge for white persons had existed prior to the establishment of the plaintiff lodge, since white and Negro Masonic lodges have historically existed as parallel but distinct organizations and without interrelation.

[9] **Evidence—Admission—Treatises.** By qualifying the author as an expert, treatises on ancient matters to which living witnesses are unlikely to be obtained may be admitted into evidence as an exception to the hearsay rule.

[10] **Costs—Depositions.** In view of Rule of Pleading, Practice and Procedure 26(d)(2), which permits the deposition of a party to be used by an adverse party for any purpose, the court will not presume that a deposition actually used at a trial was not taken for that purpose and, hence, the expense of taking such deposition may properly be taxed as a cost.

[11] **Same—Apportionment.** In an action where none of the defendants were successful, it was not error to tax the costs against

each defendant separately, as opposed to apportioning them, where the court made it clear that the plaintiff could recover for each item only once.

Appeal from a judgment of the Superior Court for King County, Nos. 532922, 523559, Theodore S. Turner, J., entered April 5, 1961. *Affirmed.*

Consolidated actions for injunctive relief. Defendants appeal from a judgment in favor of the plaintiffs.

R. M. Burgunder (W. F. Lockett, of counsel), and *Deane W. Parker*, for appellants.

*Ben A. Maslan (*of *Maslan, Maslan & Hanan* and *Amos T. Hall*, of counsel*)*, for respondents.

Donworth, J.—Respondents, Most Worshipful Prince Hall Grand Lodge of Washington and its Jurisdiction, F. & A. M. *et al.* (hereafter referred to as Prince Hall Grand Lodge), brought separate actions to enjoin the operation of the Most Worshipful Universal Grand Lodge, A. F. & A. M. of Washington, *et al.* (hereafter referred to as Universal Grand Lodge), and of the Most Worshipful John A. Bell Grand Lodge of Washington, A. F. & A. M. *et al.* (hereafter referred to as John A. Bell Grand Lodge). Both appellants and respondents hold themselves out to the public as colored Masonic lodges. These actions were consolidated in the trial court and have also been consolidated for purposes of this appeal. Judgment was entered adversely to the defendants in each case, and they have each appealed therefrom.

The record in this case is voluminous. The trial consumed 8 days. Seventy exhibits were admitted in evidence (6 more were offered and refused). Several exhibits consist of books written by members of the Ma-

sonic order on the subject of Negro Masonry in the United States and printed copies of the proceedings of various grand lodge meetings relating to that subject. The testimony of the witnesses, most of which related to the Masonic antecedents of the respective parties, is transcribed in 567 pages of the statement of facts.

At the close of the evidence the trial court rendered an oral opinion (which respondents, for the convenience of this court, have included in the appendix to their brief—23 pages). In this opinion, the court exhaustively reviewed the evidence and also the many cases relied on by the respective parties.

Thereafter, the trial court entered 26 findings of fact and 8 conclusions of law in each of the consolidated cases (which are virtually identical). After hearing and denying appellants' post-trial motions, the court entered its judgment and decree in each case (effective 30 days thereafter) permanently enjoining the respective appellants from establishing or conducting lodges of Masons or auxiliaries thereof within this state and from using certain specified words or initials indicative of the Masonic order.[1]

Appellants, in their joint brief in this court, rely for reversal on 20 assignments of error. Of these, 13 relate

[1] The trial court's decree enjoined appellants from establishing or conducting lodges of Masons or auxiliaries thereof within the state of Washington and from using the words "Ancient Free and Accepted Masons," "Free and Accepted Masons," "Masonic Lodge," "Masons," "Freemasons," "Scottish Rite Masons," of the initials "A. F. & A. M." or "F. & A. M.," or any colorable imitations thereof in any manner whatsoever; and from holding themselves out as Masons or Masonic lodges and from using or employing rituals, ceremonies, names, insignia, emblems, badges, symbols, signs, paraphernalia, or designations of an organization of Masons.

to certain findings of fact and certain conclusions of law based thereon.

[1] Appellants argue in support of their first 6 assignments of error that the comparative analysis of the origin and ancestry of the 3 lodges involved in this case was not a proper or necessary issue to be decided by the trial court, citing *Most Worshipful Hiram of Tyre Grand Lodge of Ancient Free & Accepted Masons (Colored) of State of California v. Most Worshipful Sons of Light Grand Lodge Ancient Free & Accepted Masons, Jurisdiction of California*, 94 Cal. App. (2d) P. (2d) 34 (1949). In that case, both the plaintiff and defendant were found by the trial court to be clandestine Masonic lodges. Origin and ancestry were not in issue in the appellate court, which simply refused to grant one clandestine lodge the exclusive right to operate a Masonic grand lodge. It did enjoin the defendant from representing itself as the plaintiff's organization and from other fraudulent acts.

[2] Referring to the same assignments, appellants contend that respondents failed to carry the burden of proving that their origin was legitimate according to Masonic law and that appellants' origin was not. The evidence upon this issue was in conflict, but there was substantial evidence to support the trial court's findings Nos. 4, 9, 12, 15, and 20. This court cannot retry issues of fact where there is substantial evidence in the case to support the trial court's findings. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn. (2d) 570, 343 P. (2d) 183 (1959).

Respondents trace their Masonic ancestry from African Lodge No. 459, established in Massachusetts in 1784. The trial court found that the source of all legitimate

Freemasonry among colored men in the United States is African Lodge No. 459. The origin of this ancestral lodge and Negro Masonry in the United States was summarized in the recent case of *International Free & Accepted Modern Masons v. Most Worshipful Prince Hall Grand Lodge, Free & Accepted Masons of Kentucky*, 318 S. W. (2d) 46 (Ky.) 1958), 76 A.L.R. (2d) 1386, at pages 48 and 49:

> "As is well known, the order of Free and Accepted Masons is an ancient and honorable secret fraternity. Its origin is lost in antiquity. The Masonic legend is that it began with the craftsmen at the building of King Solomon's Temple. Documentary rolls and other records, still preserved, of the Fourteenth Century and later centuries prove the establishment and continuity of Masonic lodges at least from such times down to the establishment of the premier Grand Lodge of England in 1717. From that time previously separate lodges became subordinate affiliates of Grand Lodges. All regular grand and subordinate lodges throughout America, directly or indirectly, have sprung from this mother grand lodge. [Citing Encyclopedia Britannica, 'Freemasonry.']
>
> "A brief history of Freemasonry among colored people in America, as shown in this record and by historical references and in several judicial opinions, seems appropriate.
>
> "Prince Hall, a free Negro, a native of Barbados, West Indies, became a worthy resident of Massachusetts. He knocked and the door of Masonry was opened to him by a British Military Lodge in Boston in the year 1775. He was the first man of African descent to become a Master Mason in America. Hall became a Revolutionary War patriot, receiving recognition from General Wash-

ington and other leaders. After the war, Hall and his brethren were refused a charter by the Provincial Grand Lodge of Massachusetts because of their race. Upon their application, the Grand Lodge of England, 'under authority of His Royal Highness, Frederick, Duke of Cumberland, Grand Master of the Most Ancient and Honorable Society of Free and Accepted Ancient Masons,' granted them a charter on September 29, 1784, under the name of African Lodge No. 459, to be opened in Boston. That was done in May, 1787. Later, African Lodge No. 459 declared itself to be a Grand Lodge with jurisdiction throughout the United States, and the Grand Lodge of England granted a patent or provincial powers to the African Lodge as such. After the death of Prince Hall in 1807, the colored Masonic grand lodge changed their names in his honor and many succeeding lodges have adopted it.

"As time went along, Prince Hall Grand, and subordinate lodges of colored Masons were chartered and organized throughout the United States, Canada and other countries, all of them springing from African Lodge No. 459. These historical facts are more or less confirmed by several judicial opinions. See, *Prince Hall Grand Lodge of F. & A. Masons v. Most Worshipful King Solomon Grand Lodge, A. F. & M. (Colored)* 62 N. M. 255, 308 P. (2d) 581; *Most Worshipful Widows' Sons Grand Lodge of Ancient F. & A. Colored Masons of Pennsylvania v. Most Worshipful Prince Hall Grand Lodge of F. & A. Masons of Pennsylvania*, 160 Pa. super. 595, 52 A. 2d 333; *Most Worshipful Prince Hall Grand Lodge, Free & Accepted Masons of Georgia v. Supreme Grand Lodge, Modern Free & Accepted Colored Masons of the World, D. C.*, 105 F. Supp. 315."

The evidence presented by respondent is in accord with the historical account related above.

The following is a summary of the findings of the trial court:

(1) Prior to the date of its incorporation, respondent Prince Hall Grand Lodge existed as an unincorporated association in the state of Washington from the year 1903, but traces its Masonic background in this state to Prince Hall Ancestry Lodge organized in 1889 at Roslyn, Washington. Prince Hall Grand Lodge was first incorporated in the state of Washington in 1906 under the name of "Grand Lodge of Free and Accepted Masons—African—of Washington." In 1907, the name was changed to "Most Worshipful United Grand Lodge of Washington and Jurisdiction." In 1944, the name was changed to "Most Worshipful Prince Hall Grand Lodge of Washington and its Jurisdiction, F. & A. M."

(2) Appellant John A. Bell Grand Lodge and appellant Universal Grand Lodge organized their grand lodges in the state of Washington in 1945 and 1947, respectively. The former claimed to trace its Masonic ancestry to a lodge that was established by a former Prince Hall member who was expelled by the Grand Lodge of Michigan in 1898, and the latter claimed ancestry to a white Grand Lodge of Roumania.

(3) The trial court found that respondent Prince Hall Grand Lodge is a legitimate Masonic lodge tracing its Masonic ancestry back to the original colored Masonic lodge in America, African Lodge, No. 459, and that appellants have no legitimate Masonic ancestry.

(4) Respondent Prince Hall Grand Lodge has 12 subordinate or Blue Lodges in this state with almost 800 members and with a corresponding membership in Eastern Star Chapters, Scottish Rite Consistory and

Shrine groups. Respondents have about $100,000 invested in buildings and properties in the state of Washington.

(5) Appellants have, since their organization, falsely represented themselves as legitimate Masonic organizations and have sought and gained membership among colored men and women of good moral character who might otherwise have sought affiliation with respondents.

(6) The rituals, ceremonies, distinguishing names, words, insignia, symbols, emblems, badges, signs and paraphernalia used by appellants are identical, or so nearly identical, with those used by respondents as to confuse the identities of appellant organizations with those of respondents, and are calculated to confuse, mislead and deceive, and, in fact, have confused, misled, and deceived the public to the detriment and injury of respondents and of persons who may desire to become members of a legitimate lodge of Free and Accepted Masons or a legitimate auxiliary or associate group thereof.

The findings of fact as summarized above and in all other related particulars material to the trial court's conclusions of law are supported by substantial evidence.

This court has on many occasions affirmed decrees of trial courts which have enjoined the use of identical trade names or trade names so similar as to create confusion in the minds of the public. The rules governing unfair competition in the use of trade names were set forth in *Seattle Street R. & Municipal Employees Relief Ass'n v. Amalgamatid Ass'n of Street, Elec. R. &*

Motor Coach Employees of America, 3 Wn. (2d) 520, 101 P. (2d) 538 (1940), and have been repeated in *Foss v. Culbertson*, 17 Wn. (2d) 610, 624, 136 P. (2d) 711 (1943); and *Holmes v. Border Brokerage Co.*, 51 Wn. (2d) 746, 750, 321 P. (2d) 898 (1958).

[3] It is unnecessary to again enumerate the 8 rules set forth in the above-cited cases. We are of the opinion that an established fraternal organization is entitled to relief when its name or one so similar as to be deceiving is adopted by another organization and used in a manner which is confusing and deceiving to the public and is detrimental to the organization already using the name.

The parties to this suit are not engaged in commercial businesses. However, *Seattle Street R. & Municipal Employees Relief Ass'n v. Amalgamated Ass'n of Street, Elec. R. & Motor Coach Employees of America*, *supra*, involved two competing relief associations engaged in charitable activities. We said in that case, at page 534:

> "While the cases hereinabove cited dealt with commercial businesses and, for the most part, with tangible things sold by them, the principle involved is no less applicable to transactions such as are involved in this case. [Each of the parties was sponsoring a dance and selling tickets for fund-raising purposes.] The underlying concept is that of unfair competition in matters in which the public generally may be deceived or misled."

In the recent case of *International Free & Accepted Modern Masons v. Most Worshipful Prince Hall Grand Lodge, Free & Accepted Masons of Kentucky*, *supra*, the Kentucky Prince Hall Grand Lodge sought and ob-

tained an injunction against a competing lodge enjoining it from representing itself as a Masonic lodge and using or employing rituals, ceremonies, etc., of an organization of Masons. In the course of its opinion, the Supreme Court of Kentucky said:

> ". . . . The cardinal and characteristic words in the names of both of these parties are 'Free and Accepted Masons,' the foremost descriptive word being 'Masons.' The term and what it signifies is the most valuable asset of the Prince Hall Lodge, which it has sought to protect. . . ."

In affirming the granting of an injunction obtained by a Prince Hall Grand Lodge, in *Prince Hall Grand Lodge of Free & Accepted Masons v. Most Worshipful King Solomon Grand Lodge, A. F. & A. M. (Colored)*, 62 N. M. 255, 308 P. (2d) 581 (1957), the court said:

> "We think appellant's use of the word 'Mason' or the terms 'Free and Accepted Masons' or 'A. F. & A. M.' or 'F. & A. M.', renders the name of the Grand Lodges so strikingly similar, as to cause confusion, tends to deceive the public, and induces persons to join one institution when actually they intended to join the other. This is verified from what is later said. The quoted words and terms are distinctive features of appellee indeed, they are its most valuable assets. Consequently, appellee should be protected from any invasion of the right of exclusive use of them, also in the exclusive use of its insignia, symbols, emblems, etc., commonly used by it in the practice of Masonry. . . ."

Among the cases cited by the New Mexico court in support of its holding are these Prince Hall cases: *Supreme Grand Lodge, Modern Free & Accepted Colored*

Masons of World v. Most Worshipful Prince Hall Grand Lodge, Free & Accepted Masons, Jurisdiction of Georgia, 209 F. (2d) 156, cert. den. 347 U. S. 953, 98 L. Ed. 1099, 74 S. Ct. 679 (1954); *Most Worshipful Prince Hall Grand Lodge, Free & Accepted Masons of Colorado & Jurisdiction v. Most Worshipful Hiram Grand Lodge, Free & Accepted York Masons of Colorado & Jurisdiction, National Compact Prince Hall Origin*, 85 Colo. 17, 273 Pac. 648 (1928).[5]

Appellants cite the following cases where the courts have been asked, and have refused, to enjoin a lodge from holding itself out as a Masonic lodge. The first case was *Most Worshipful Hiram of Tyre Grand Lodge of Ancient Free & Accepted Masons (Colored) of State of California v. Most Worshipful Sons of Light Grand Lodge Ancient Free & Accepted Masons, Jurisdiction of California*, 94 Cal. App. (2d) 25, 210 P. (2d) 34 (1949). The California District Court of Appeal (1st Dist.) did refuse to enjoin the operation of an organization from conducting a Masonic grand lodge. However, it does not appear that either party claimed any legitimate Masonic ancestry. The court pointed out that both parties were "clandestine" Masonic lodges. It, therefor, refused to grant one such lodge the exclusive right to exist over the other.

The second case is *Free & Accepted Masons of the State of Texas v. Ancient Free & Accepted Masons, Cal-*

[5] *Prince Hall Grand Lodge F. & A. M. of New York v. Supreme Council*, Misc. (2d) 800, 227 N.Y.S. (2d) 841 (1962), is a recent trial court decision in which an injunction sought by a Prince Hall Lodge to enjoin a fraternal organization from holding itself out and operating as "Masons" was granted. To the same effect as the above reported New York case is a memoradum decision dated September 14, 1960, from the Connecticut Court of Common Pleas which was filed with this court by respondent.

ored, 179 S. W. 265 (Tex. Civ. App. 1915). Here both parties claimed to be the only legitimate Negro Masonic lodge in Texas. No determination was made on this issue. The court found that the defendant did not adopt its name with the intent of leading people to believe it was the plaintiff. The court said that it could be held that the defendant adopted its name under circumstances which did not induce a belief that it was the same order as the plaintiff. The court concluded that an injunction was not warranted.

Taylor v. Austin, 221 S. W. (2d) 933 (Tex. Civ. App. 1949), is factually similar to the Texas case just discussed and was disposed of by denial of an injunction on its authority.

A leading case concerning unfair competition among fraternal organizations is *Grand Lodge of Improved Benevolent & Protective Order of Elks of the World v. Grand Lodge, Improved, Benevolent & Protective Order of Elks of the World, Inc.* 50 F. (2d) 860 (1931). The case involved two colored fraternal organizations. A schism had developed within the plaintiff organization which resulted in the secession of certain representatives and the establishment of a rival order under practically the same name. The court, in an opinion written by the late Judge Parker, speaking for the Court of Appeals (4th Cir.), stated:

law of unfair competition.

> "Coming to the merits, it is well established that a benevolent, fraternal, or social organization will be protected in the use of its name by injunction restraining another organization from using the same or another name so similar as to be misleading."

After citing numerous cases and discussing certain treatises, the court went on to say, at page 864:

> "In the case at bar, complainant for more than a quarter of a century had enjoyed the use of its name and had built up thereunder a large fraternal order among the colored people of the United States. Its fraternal, charitable, and educational activities had commended it to the public, and had given membership therein a value to the people from whom it recruited its membership. It was entitled to enjoy the fruits of the organization which it had built up, unhampered by the efforts of others to appropriate to themselves its corporate name with the advantages thereto attaching. If the Virginia members were dissatisfied, they, of course, had a right to withdraw and organize a new order; but they had no right, if they did so, to adopt the name of the original order or to hold themselves out as a branch of that order. To do so constitutes a fraud upon the original order and upon the public, and, if allowed, would result in enabling the rival organization to appropriate to itself the advantages which the original order had built up through years of effort. A more glaring example of unfair competition could not well be imagined."

We think the respondents are supported by ample authority in seeking an injunction under the common laws of unfair competition.

The trial court also found appellants to be acting in violation of RCW 9.37.050 (Laws of 1911, chapter 46, § 1), relating to the fraudulent use of the name of a secret society. The statute applies to organizations us-

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For a comprehensive annotation on the principal problems involved in the instant case, see 76 A.L.R. (2d) 1399.

ing "the name or title of any secret fraternal association, society, order or organization which has had a grand lodge in this state for five years. . . ." It was established that there was a Masonic grand lodge (the distinguishing name of their fraternal order being "Masons") in existence within this state for over 5 years prior to the establishment of appellants' organizations, the latter using the name "Masons" without the authority of the established grand lodge.

[4] Appellants assert that if they have violated this statute, so have respondents, since there was a white grand lodge of Masons within the state prior to the organization of respondents' grand lodge. The answed to this is that the statute was enacted in 1911 *after* respondents organized their grand lodge within the state of Washington.

Respondents' grand lodge was formed as an unincorporated association in 1903 and was incorporated in 1906. Therefore, respondents' grand lodge having been organized for the 5-year period preceding the enactment of the statute was obviously one of the organizations designed to be protected thereby.

Unless there is merit to the affirmative defense raised by appellants, the trial court properly granted the injunction.

[5] Appellants assert that respondents were guilty laches and thus were estopped from maintaining these actions. It is asserted that respondents knew of the existence and activities of appellants' grand lodges in 1948, but did not bring these actions until 1959. As this court has previously stated:

". . . To constitute laches there must not only

> be a delay in the assertion of a claim but also some change of condition must have occurred which would make it inequitable to enforce it. . . . " *Waldrip v. Olympia Oyster Co.*, 40 Wn. (2d) 469, 477, 244 P. (2d) 273 (1952).

The doctrine of laches is based upon the principles of equitable estoppel. *Gooden v. Hunter*, 56 Wn. (2d) 617, 355 U. (2d) 20 (1960); *Luellen v. Aberdeen*, 20 Wn (2d) 594, 148 P. (2d) 849 (1944).

[6] In the instant case, respondents did not acquiesce in the operation of appellants' lodges, but carried on an organized campaign to inform the public that Prince Hall Masons were the only legitimate Masonic organization composed of colored persons. The campaign included large newspaper advertisments that had wide circulation among the colored population. This program resulted in many of appellants' members leaving their lodges and even in the dissolution of one of their subordinate lodges. However, appellants' grand lodges refused to disband, and legal proceedings were finally brought.

The trial court, in its oral opinion, referred to appellants' action as "the kind of action that a person might very well say would be better calculated than a lawsuit to accomplish the desired results." We agree with the trial court that starting a lawsuit is not the only way of manifesting dissent or opposition to claimed unfair competition. Under the circumstances of ths case, the defense of laches has not been established.

Nor do we find any merit in appellants' claim that the actions were barred by the 3-year statute of limita-

tion found in RCW 4.16.080, subdivision 4, which provides:

> "An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrived party of the facts constituting the fraud."

[7] This court has been called upon to apply this statute many times, and we have consistently held that this subdivision embraces only

> ". . . suits by parties to contracts who are asking to be relieved from contracts that they were fraudulently induced to make, a where a deed has been fraudulently obtained, and suits of that character where fraud is the substantive cause of the action. . . ." *Wagner v. Law*, 3 Wash. 500, 517, 28 Pac. 1109, 29 Pac. 927 (1892).

The foregoing statement has been quoted with approval in *Morgan v. Morgan*, 10 Wash. 99, 107, 38 Pac. 1054 (1894); *Cornell v. Edson*, 78 Wash. 662, 663, 139 Pac. 602 (1914); *Henriod v. Henriod*, 198 Wash. 519, 526, 89 P. (2d) 222 (1939).

In *Constable v. Dake*, 144 Wash. 263, 267, 257 Pac. 637 (1927), we also stated:

> "The contentions made on the second of the subdivisions quoted, we think, are also concluded by our former cases. We have held that this provision of the statute is applicable only in those instances where fraud is practiced directly upon the complaining party, and is substantive cause of the action—instances where the complaining party has been induced to assume some obligation or liability or suffer some loss which, but for the fraud, he would not have assumed or suffered—and is without application where the fraud alleged is only in-

directly involved and does not of itself form the basic ground of the cause of action. *Hutchinson Realty Co. v. Hutchinson*, 136 Wash. 184, 239 Pac. 388, and cases therein collected."

The basis of this suit is unfair competition. The above quoted provison of RCW 4.16.080 (relating to the limitation of fraud actions) is not applicable. Furthermore, these actions are to enjoin further wrongful conduct, and damages for past injuries are not sought by respondents.

[8] Appellants also assert as a defense that relief should be denied respondents because they do not come into court with "clean hands." The basis for this contention is that, because of the Masonic doctrine of "ex-grand lodge in the state of Washington was organized and existed in this state for many years prior to respondents' establishing their grand lodge. It is obvious that the courts are not bound by Masonic law. Nor does it appear that the doctrine which appellants advocate has prevented the operation of both Negro and white grand lodges within the same state. The following quotation from *Ancient Egyptian Arabic Order of Nobles of Mystic Shrine v. Michaux*, 279 U. S. 737, 738, 73 L. Ed. 931, 49 S. Ct. 485 (1929), is pertinent:

> "From early times there have been two distinct Masonic fraternities in the United States, one confined to white men and the other to Negroes. Each has had its local lodges, grand lodges and supreme lodge, and also several consonent bodies, including Knights Templar and Scottish Rite consistories. Both have existed in the same territory and have had similar names, rituals and emblems, and yet have been independent and without any interrelation. The white fraternity's existence in this

country reaches back to early colonial times. The Negro fraternity was organized in Boston in 1784 and afterwards was extended to other sections."

We find no merit in appellants' argument that the prior existence of the white grand lodge in Washington prevents respondents from obtaining relief from unfair competition by appellants. As pointed out by the trial court in its oral decision, the white grand lodge is not a party to this litigation and its rights are not before us. We note, however, that it and respondents' grand lodge have coexisted in this state for over half a century.

[9] Error is assigned to the admission of books on Masonic history into evidence on the ground that they were hearsay. These books were introduced to show the history and legitimacy of colored Masonry and the Prince Hall lodges in this country. Foundation was laid for the admission of the historical works by qualifying their authors. The admission into evidence of treatises on ancient matters to which living witnesses are unlikely to be obtained is regarded as an exception to the hearsay rule. 5 Wigmore on Evidence § 1597; 20 Am. Jur., Evidence § 467. That historians may disagree goes only to the weight of the evidence. In this instance the history is buttressed by judicial opinions previously referred to concerning origin and ancestry of Prince Hall lodges.

There were many books on Masonic history introduced by both parties and admitted into evidence. However, it is contended that the trial court erred in refusing to admit into evidence exhibit No. 46, a history book offered by appellants. The record shows that this book was a supplement to a treatise on Masonic history.

written by a person other than the author of the original treatise. Appellants did not attempt to qualify this person as an expert nor did they show any other basis to justify the court in ruling that his work should be considered an authoritative history. Therefore, the trial court did not abuse its discretion by refusing to admit this volume into evidence.

[10] Appellants' assigned error No. 20 is in regard to the trial court's refusal to retax costs. The costs involved were taxed to appellant Universal Grand Lodge and were incurred in the taking of a deposition. It is contended that neither RCW 4.84.090 nor the rules of court authorize taxing, as costs, the expenses incurred to taking the deposition of a party or witness "for the purpose of preparing for the trial of the pending action, nor in ascertaining his rights for his own benefit." Such was our holding in *Platts v. Arney*, 46 Wn. (2d) 122, 278 P. (2d) 657 (1953), followed in *Arneson v. Rowe*, 46 Wn. (2d) 718, 284 P. (2d) 320 (1955). The deposition in question was that of J. T. Washington, a defendant in the action. The deponent died prior to the trial. Portions of his deposition were offered into evidence by both respondents and appellants. It is urged that the taxability of expenses of a deposition depends on the purpose for which it was taken and not the eventual use made of it at the trial. Assuming this is true, it does not help appellants. Rule of Pleading, Practice and Procedure 26 (d) (2) reads, in part, as follows:

> "(2) The deposition of a party . . . may be used by an adverse party for any purpose."

Since the deposition was, in fact, introduced into evidence, we shall not presume that it was not taken for

that purpose. Therefore, there was no error in taxing this item.

[11] It is further contended by appellants, in regard to the matter of costs, that, with respect to another deposition and two other items,[1] the costs should have been apportioned between appellant Universal Grand Lodge and appellant John A. Bell Grand Lodge rather than entering these costs against each separately. We believe the objection was cured by the trial court's ruling that respondents could recover payment for these items only once and could not collect costs from both appellants for the same items. *Van Nostern v. Richey & Gilbert Co.*, 2 Wn. (2d) 663, 99 P. (2d) 608 (1940), is cited by appellants for the proposition that the costs should be apportioned. In that case two defendants in a consolidated action appealed. The judgment against one of them was reversed and as to the other defendant it was affirmed. The defendant who prevailed on appeal was allowed to recover from the plaintiffs one-half of its appellate costs. We do not think that it follows that trial costs should be apportioned among defendants in a consolidated action when one of the defendants is successful.

As pointed out in *Ancient Egyptian Order of Nobles of Mystic Shrine, v. Michaux*, *supra*, from colonial times there have been two Masonic fraternities in the United States—one white and the other Negro. The record indicates that lodges of "Prince Hall" origin have a valid claim to being members of the ancient and honorable order known as Masons. A photostatic copy

[1] The items are listed as: King County Auditor—Certified Copies, $4.50, and Court of Common Pleas, New Haven, Conn., Certified Copies, $17.50

of the original charter granted to the lodge organized by Prince Hall in 1784 was appended to the brief of respondent.

That a group of persons seeks to form an organization devoted to charitable and fraternal objectives is commendable, but they cannot adopt the name of an already established order which has gained a highly esteemed reputation in the minds of the public. This court stated, in *State exrel. LaFollette v. Hinkle*, 131 Wash. 86, 93, 229 Pac. 317 (1924):

> ". . . Nothing so exclusively belongs to a man or is so personal and valuable to him as his name. His reputatiton and the character he has built up are inseparably connected with it. Others can have no right to use it without his express consent, and he has a right to go into any court at any time to enjoin or prohibit any unauthorized use of it. . . ."

While the *LaFollette* case involved an individual and is not authority for enjoining the acts of appellants in this case, it does show the value which this court has placed upon the right to the exclusive use of an established name.

There is no doubt that the persons joining appellants' lodges thought they were joining a legitimate Masonic lodge and that this was a principal reason for seeking membership. This is amply borne out by the fact that many of appellants' members resigned from their lodges after respondents began their campaign to

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In *Prince Hall Grand Lodge F. & A.M. of New York v. Supreme Council, supra*, note 2, it is stated that George E. Bushnell, former Chief Justice of the Supreme Court of Michigan, appeared as a witness and testified that Prince Hall Lodge has the only existing charter of any lodge in America originally granted by the Grand Lodge of England.

inform the public that their organization was the only legitimate Negro Masonic grand lodge in the state of Washington.

For the reasons stated in this opinion, the two decrees appealed from must be affirmed. It is so ordered.

OTT, C. J., FINLEY, HUNTER, AND HAMILTON, *JJ.*, concur.